



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,420	09/23/2003	Tsafrir Ben-Ari	26/562	1094

7590 01/28/2005

DR. MARK FRIEDMAN LTD.
c/o Bill Polkinghorn
Discovery Dispatch
9003 Florin Way
Upper Marlboro, MD 20772

EXAMINER

SWARTHOUT, BRENT

ART UNIT PAPER NUMBER

2636

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

70

Office Action Summary	Application No. 10/667,420	Applicant(s) BEN-ARI ET AL.	
	Examiner Brent A Swarthout	Art Unit 2636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-25 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-20 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 21 and 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 1-2, 4-5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert et al. in view of Alpers and Maguire, Jr.

Claims 1-2 are rejected for the same reasons as set forth previously in Paragraph No. 1 of the Office action mailed 6-22-04. Regarding newly added limitations pertaining to helmet, such are satisfied by Maguire as set forth previously in Paragraph 2 of the Office action mailed 6-22-04.

Regarding having a first part of a wireless communication link be located in a cockpit, such is satisfied by Ebert since the trigger switch of control stick 36 which designates a command to be sent to data link pod 16 for forwarding to missile 12 via RF signals 22, is located in a cockpit (col.8, lines 1-10), the claims not stating that the portion of the wireless link in the cockpit has to be a wireless transmitter.

Regarding claim 23, the trigger switch of control stick 36 acts as a transmitter since it designates a command for transmission to missile 12.

2. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert et al. in view of Alpers, and further either in view of Maguire, Jr. and Takeyama, or Takeyama.

Art Unit: 2636

Claims are rejected for the same reasons as set forth previously in paragraph No. 3 of the Office action mailed 6-22-04.

3. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire, Jr. in view of Takeyama.

Claims are rejected for the same reasons as set forth previously in paragraph No. 4 of the Office action mailed 6-22-04.

4. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire, Jr. in view of Takeyama and Hergesheimer.

Claims are rejected for the same reasons as set forth previously in paragraph No. 5 of the Office action mailed 6-22-04.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire, Jr. in view of Takeyama and Hamilton et al.

Claim 13 is rejected for the same reasons as set forth previously in paragraph No. 6 of the Office action mailed 6-22-04.

6. Claims 21- 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

b. Claims 14-20, 24 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,667,694 in view of Maguire, Jr. and Takeyama, and further in view of Hergesheimer (claims 16-17) or Hamilton et al.(claim 18) . Claims are rejected for the same reasons as set forth previously in paragraph Nos. 5,6 and 10 of the last Office action mailed 6-22-04.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Regarding remarks on page 13 of the response, since Takeyama teaches that audio information will be output for a target within a specified range of actual eye gaze, such would have satisfied the limitations of claim 8.

Regarding remarks on page 16, the double patenting rejection has not been overcome and a terminal disclaimer is still required to overcome such a rejection. Whether or not the application is a continuation of a case filed after June 8, 1995 is not a determining factor as to whether a terminal disclaimer is necessary.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent A Swarthout whose telephone number is 571-272-2979. The examiner can normally be reached on M-F from 6:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass, can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/667,420
Art Unit: 2636

Page 6


Brent A Swarthout
Examiner
Art Unit 2636

BRENT A. SWARTHOUT
PRIMARY EXAMINER